

## **fashioncheque – General Terms and Conditions fashion retailers United Kingdom**

fashioncheque holding BV, Kruisweg 801-C, 2132 NG Hoofddorp, the Netherlands, (hereinafter: 'FCH') is the issuer of the fashioncheque voucher card (hereinafter: 'fashioncheque').

### **Article 1. Applicability**

- (1) These general terms and conditions are applicable to all contracts and offers from FCH to the fashion retailer (hereinafter: "Contract").
- (2) FCH is entitled to amend these general terms and conditions, provided that such amendments do not materially affect the rights and obligations of the fashion retailer, the core performance remains unchanged, and the amendments are necessary for the normal course of FCH's business operations.
- (3) The applicability of any general terms and conditions used by the fashion retailer is hereby expressly excluded.
- (4) These general terms and conditions are available at [www.fashioncheque.com](http://www.fashioncheque.com).

### **Article 2. Obligations of the fashion retailer**

- (1) The fashion retailer is entitled to accept fashioncheques for payment purposes in accordance with the terms of this Contract.
- (2) The fashion retailer must, at its own expense, immediately provide FCH with all the information necessary for the execution of this Contract.
- (3) The fashion retailer must ensure, at its own expense, that it creates the necessary technical conditions for the execution of this Contract. These include, in particular, the acquisition and provision of suitable payment terminals in accordance with the requirements of FCH.
- (4) The fashion retailer must immediately report errors, defects, damage and the assertion of rights by third parties to FCH.
- (5) The fashion retailer must immediately review all statements submitted to it and verify the correct crediting of sales transacted by FCH and to immediately assert any objections, i.e. no later than five banking days following the respective invoicing date.
- (6) The fashion retailer has to provide FCH with a list of all its participating branches and to report changes immediately.
- (7) The fashion retailer agrees to the publication of its business name and address in written form or electronically on the internet for the purpose of publicising and promoting all sales and acceptance points of fashioncheques.
- (8) The fashion retailer is prohibited from:
  - (a) making the use of a fashioncheque subject to any restrictions or conditions; and
  - (b) applying charges or surcharges for the use of fashioncheques; and
  - (c) accepting fashioncheques for other products than clothing and shoes.
- (9) The fashion retailer shall pay the clearing fee agreed in the Contract for the acceptance of fashioncheques.

### **Article 3. Remuneration / invoicing / offsetting**

- (1) All fees are exclusive of statutory VAT.
- (2) FCH shall invoice the mutually payable amounts under this Contract on a monthly basis, unless otherwise agreed.
- (3) The fashion retailer may only set off undisputed or legally established claims against the claims of FCH. The right of FCH to set-off shall remain unaffected.

### **Article 4. Term of the Contract**

- (1) The Contract is concluded for an indefinite period and can be terminated by either party with a notice period of 6 months.
- (2) The right of the parties to extraordinary termination remains unaffected. Material reasons justifying the extraordinary termination include, in particular,
  - (a) if the fashion retailer violates an essential provision of this Contract and, despite a reminder, the breach of contract is not rectified after a reasonable period, or
  - (b) if enforcement actions are instituted against the fashion retailer or if an application is filed to open insolvency proceedings, or
  - (c) if the fashion retailer terminates a substantial part of its business.
- (3) On termination of the Contract, the fashion retailer must return all materials and equipment provided to it or to destroy them as instructed by FCH and, in such case, to provide proof of destruction.

### **Article 5. Liability of FCH**

- (1) FCH is fully liable to the fashion retailer for intent and gross negligence. In the event of other negligent acts, FCH is only liable for:
  - (a) personal injury;
  - (b) damages for which it is liable due to mandatory statutory provisions; and
  - (c) damages due to the breach of essential duties that jeopardise the achievement of the purpose of this Contract or whose fulfilment makes the proper implementation of this Contract possible and on which the fashion retailer may rely (material contractual obligations).

- (2) In the case of breach of material contractual obligations, the liability of FCH for simple negligent acts is limited to damages that are typical for this kind of contract and are foreseeable on entry into the Contract.
- (3) FCH shall never be liable for indirect damage, including but not limited to consequential damage, loss of profit, loss of savings, loss of goodwill, business interruption, or damage arising from claims of third parties.
- (4) Any liability of FCH for an attributable failure in the performance of the Contract shall only arise if the fashion retailer has given FCH written notice of default in a proper manner, allowing a reasonable period to remedy the failure, and FCH continues to fail attributable in the performance of its obligations after expiry of such period.
- (5) If and insofar as FCH is liable for any damage, such liability shall be limited to the amount paid out in the relevant case under FCH's liability insurance.
- (6) The limitations of liability set out in this article shall not apply in the event that the damage is the result of wilful misconduct or gross negligence on the part of FCH.

## **Article 6. Confidentiality, privacy**

- (1) The parties agree to maintain confidentiality with regard to trade and business secrets and other confidential facts that become known to them in the context of the conclusion and execution of this Contract. This obligation continues to apply for a period of three years after the termination of this Contract. The parties will obligate their employees accordingly.
- (2) The parties must also comply with the applicable data protection regulations vis-à-vis the other party.

## **Article 7. Involvement of subcontractors**

- (1) FCH is entitled to make use of third parties as vicarious agents in performing this Contract.

## **Article 8. Assignment of rights and obligations**

- (1) FCH may assign or transfer its rights and obligations under this Contract, in whole or in part, to a third party. In the event of such assignment or transfer, FCH shall inform the fashion retailer thereof within a reasonable period of time.
- (2) The fashion retailer may not assign or transfer its rights under this Contract, in whole or in part, to a third party without the prior written consent of FCH, which consent shall not be unreasonable withheld.

## **Article 9. Intellectual Property**

- (1) All intellectual property rights of FCH relating to fashioncheques, promotional materials, logos, corporate identity, systems, software and any other materials provided or developed by FCH (hereinafter 'Materials') shall vest exclusively in FCH or its licensors, unless otherwise agreed in writing.
- (2) FCH grants the fashion retailer a non-exclusive, non-transferable licence to use the Materials solely for the performance of the Contract and for the duration thereof.
- (3) The fashion retailer is not permitted to copy, reproduce, modify, translate, rent, sell, exploit, make available to third parties, or otherwise disclose or publish the Materials, in whole or in part, without the prior written consent of FCH.

## **Article 10. Force Majeure**

- (1) Force majeure shall mean any circumstance beyond the reasonable control of a party, as a result of which performance of this Contract becomes wholly or partially impossible, including but not limited to war and political unrest, epidemics and pandemics, natural disasters, and governmental measures. A shortage of personnel, materials, suppliers, or utilities shall only qualify as force majeure if caused by the aforementioned circumstances.
- (2) The party invoking force majeure shall notify the other party thereof in writing without undue delay and shall use reasonable efforts to mitigate the effects of the force majeure event.
- (3) During the period of force majeure, the obligations of the affected party shall be suspended. If performance has become permanently impossible, the relevant obligations shall lapse without any obligations to pay damages.
- (4) If the force majeure situation continues for more than sixty (60) days, either party shall be entitled to terminate this Contract, in writing with respect to the part not yet performed, without being liable for any damages.

## **Article 11. Final provisions**

- (1) Dutch law applies to the business relationship between FCH and the fashion retailer to the exclusion of the UN Sales Convention.
- (2) The exclusive place of jurisdiction for all legal disputes arising out of or in connection with this Contract is Amsterdam.
- (3) Amendments or additions to this contract, including the annexes to this Contract, must be made in writing or be submitted by e-mail.
- (4) Should individual provisions of this Contract, including the appended annexes, be or become invalid, the remaining provisions shall remain unaffected. The ineffective provisions shall be replaced or supplemented by effective provisions that most closely approximate the economic purpose pursued by the parties. This applies analogously to any omissions in this Contract.